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IN THE

Supreme Court of the United States

HOWARD DELIVERY SERVICE, INC., Debtor, and the OFFICIAL COMMITTEE OF UNSECURED CREDITORS of HOWARD DELIVERY SERVICE, INC.,

Petitioners,

v.

ZURICH AMERICAN INSURANCE COMPANY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF FOR THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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QUESTION PRESENTED

The question presented is whether a claim by a creditor insurance company for unpaid workers' compensation insurance premiums constitutes "contributions to an employee benefit plan arising from services rendered" under section 507(a)(5) of the Bankruptcy Code, as amended, and is therefore entitled to priority status.

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INTEREST OF THE NATIONAL COORDINATING COMMITTEE FOR MULTIEMPLOYER PLANS [1]

The National Coordinating Committee of Multiemployer Plans ("NCCMP") is a nonprofit, tax-exempt organization that has participated for thirty years in the development of employee benefits legislation and regulations promulgated to implement the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, and other laws affecting multiemployer plans. Currently, approximately 600 multiemployer pension, welfare, and other Taft-Hartley plans[2] are affiliated with the NCCMP. These affiliated plans cover a majority of the participants of multiemployer plans throughout the nation and are representative of the multiemployer plan community generally. The NCCMP has frequently participated as *amicus curiae* in the United States Supreme Court and the federal courts of appeal.

Multiemployer benefit plans are funded by employer contributions set at rates established through collective bargaining between one or more unions and two or more signatory employers.[3] The contributions one employer makes to a multiemployer plan typically will help fund the benefits of other employers' active employees, inactive employees and retirees, as well as the benefits of that employer's active employees. Conversely, if one signatory employer fails to remit contributions on behalf of its covered employees, its employees as well as the employees of other employers will be impacted. The viability of multiemployer plans would be placed at great risk if Congress did not provide the trustees of

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[1] Pursuant to Rule 37.6 of the Rules of this Court, the undersigned hereby state that no counsel for Petitioner or Respondent authored any part of this brief. Moreover, no person or entity other than the NCCMP made a monetary contribution to the preparation or submission of this brief.

[2] Section 302(c) of the Labor-Management Relations Act ("LMRA"), 29 U.S.C. § 186(c).

[3] ERISA section 3(37), 29 U.S.C. § 1002(37).

these plans with an effective means of collecting delinquent employer contributions. Accordingly, on several notable occasions the NCCMP's participation in the legislative process has been instrumental in crafting federal laws that promote the expeditious enforcement of employer contribution obligations to multiemployer plans.

In 1980, the NCCMP was recognized by Senate cosponsors as having had a significant impact on the Multiemployer Pension Plan Amendments Act of 1980 ("MPPAA"), PUB. L. NO. 96-364, 94 STAT. 1208.[4] The MPPAA amended ERISA so as to improve substantially the recourse of multiemployer plan trustees against employers who fail to fulfill their obligation to make promised contributions. Congress recognized that the financial soundness and stability of multiemployer plans was being undermined by employer delinquencies to the direct detriment of the plans, their participants and beneficiaries, and those employers that honored their contribution obligations. *See Central States Pension Fund v. Central Transp., Inc.*, 472 U.S. 559, 581 n.22 (1985) (quoting the floor manager's statement during debate on the MPPAA concerning "the problems some employers create for multiemployer plans by not fully and promptly complying with their contribution obligations.").

Enactment of the MPPAA proved to be a major triumph for multiemployer plan trustees in their efforts to collect contributions from delinquent employers. Among other things, the MPPAA established an additional federal cause of action which may be brought by multiemployer plan trustees to enforce an employer's contribution obligations under the terms of a collective bargaining agreement. ERISA section 515, 29 U.S.C. § 1145. Moreover, in cases where multiemployer plan trustees prevail, the MPPAA requires the court

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[4] *See* 126 CONG. REC. S9835 (daily ed., July 21, 1980) and S10100 (daily ed., July 29, 1980).

to award the plan the unpaid contributions, interest on the unpaid contributions, liquidated damages and reasonable attorney's fees and costs. ERISA section 502(g)(2), 29 U.S.C. § 1132(g)(2).

Notwithstanding the MPPAA's incentives for timely payment of employer contributions, too often fund trustees are confronted with lengthy lists of delinquent employers. Many of these employers, overwhelmed by mounting debts, seek protection under the Bankruptcy Code. In the event of a delinquent employer's bankruptcy, any proceeding by the trustees of a multiemployer plan that had been or could be brought under ERISA for the collection of contributions would be subject to an automatic stay under Bankruptcy Code section 362, 11 U.S.C. § 362. As a consequence, the plan would join the ranks of the debtor's unsecured creditors. Depending on when a multiemployer plan's claim arose, the claim may be entitled to priority. In general, a claim for contributions arising from services rendered during the post-petition operation of the debtor's business may be treated as second priority administrative expenses under section 507(a)(2) of the Bankruptcy Code, as amended. A claim for contributions to the plan arising from services rendered within 180 days before the filing of the petition may be treated as a fifth priority claim under section 507(a)(5),[5] to the extent that claim is within the dollar limitations set forth in section 507(a)(5)(B). All unsecured prepetition claims not granted priority under section 507(a)(5) would be treated as general unsecured claims.

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[5] When originally enacted in 1978 under the Bankruptcy Reform Act of 1978, current section 507(a)(5) was codified as section 507(a)(4). After the Fourth Circuit issued its decision below, the President signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") Pub. L. No. 109-08, which made sweeping changes to the Bankruptcy Code. Among other things, BAPCPA amended the priorities in section 507(a). Citations in this brief to the Bankruptcy Code take into account the BAPCPA amendments.

In 1976, the NCCMP participated in Congress' effort to reform outdated provisions of the Bankruptcy Code which adversely impacted multiemployer plans, their participants and beneficiaries. Under the Bankruptcy Act of 1898, only claims for actual "wages and commissions" were subject to priority. 11 U.S.C. § 104(a) (*repealed* 1978). In *United States v. Embassy Restaurant, Inc.*, 359 U.S. 29 (1959) and *Joint Industry Board v. United States*, 391 U.S. 224 (1968), the U.S. Supreme Court held that contributions owed by an employer to collectively bargained welfare and annuity funds were not entitled to "wage" or "commission" priority under § 104(a)(2). In 1978, Congress added what is now section 507(a)(5) of the Code in order to overrule these two cases and to "provide a qualified priority for 'fringe benefits.'" *In re Saco Local Dev. Corp.*, 711 F.2d 441, 448 (1st Cir. 1983) (*citing* H.R. Rep. No. 95-595 (1977); S. Rep. No. 95-989 (1978)).

On the specific issue of how best to address the adverse impact of *Embassy Restaurant* and *Joint Industry Board* on the growing number of the nation's employees participating in fringe benefit plans, Congress sought the views and opinions of the NCCMP, the AFL-CIO and other labor organizations. *See generally, Bankruptcy Act Revision Hearing on H.R. 31 and H. R. 32 Before the Subcommittee on Civil and Constitutional Rights of The House Comm. On the Judiciary*, 94th Congress 2421-2465 (1976) ("*Hearings on H.R. 31 and H.R. 32*"). Although the Chairman of the NCCMP "enthusiastically support[ed]" the two bills as drafted "insofar as they would revise the Bankruptcy Act so as to provide a priority, in the distribution of the assets of the bankrupt estate, to claims for employer contributions to employee benefit plans," the Chairman also expressed the opinion of the multiemployer plan community that neither bill "t[ook] into account the seriousness of the problem" facing multiemployer plans. *Hearings on H.R. 31 and H.R. 32*, 2455 (statement of Robert Georgine, Chairman, NCCMP).

In his separate concurring opinion below, Judge Shedd construed a brief excerpt of the NCCMP Chairman's testimony as implicitly endorsing a broad construction of "contributions to an employee benefit plan" that would include premiums owed by an employer to a provider of statutory workers' compensation insurance coverage.[6] *Howard Delivery Serv. Inc. v. Zurich Am. Ins. Co. (In re Howard Delivery Serv. Inc.)*, 403 F.3d 228, 239-240 (4th Cir. 2005) (*per curiam*) (Shedd, J. concurring). Contrary to Judge Shedd's understanding of the NCCMP's position, the views expressed by the NCCMP Chairman as well as those views expressed by other labor officials at the Hearings indicate that organized labor and the multiemployer plan community were concerned that the proposed bills, "may not be catching benefits like scholarships, prepaid legal plans, day-care centers, apprenticeship training and the like which are . . . part of section 302(c)(5) of the Taft-Hartley Act." *Hearings on H.R. 31 and H.R. 32*, 2432 (statement of Max Zimney, General Counsel, Int'l Ladies Garment Workers Union, AFL-CIO).[7] Moreover,

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[6] *See also* Brief of *Amici Curiae* American Assurance Company, Hartford Fire Insurance Company, and the Travelers Indemnity Company and its Affiliates in Support of Appellant at 22-23, Howard Delivery Serv., 403 F.3d 228 (4th Cir. 2005) ("Brief of Amici Am. Assurance et al.").

[7] LMRA § 302(c), 29 U.S.C. § 186(c), lists a number of exceptions to the general prohibition in § 302(a) and (b) of employer payment to employee representatives. Section 302(c)(5), (6), (7) and (8) of the LMRA exclude payments to "jointly-trusteed" trust funds established for the sole and exclusive benefit of employees and their families and dependents for the purpose of paying for "medical or hospital care, pensions on retirement or death of employees, compensation for injuries resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sick-ness insurance, or accident insurance . . . pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs, . . . scholarships for the benefit of employees, their families, and dependents for study at educational institutions, or . . . child care centers for preschool and school age dependents of employees . . . or . . .

at no time did these witnesses suggest that the priority should embrace an insurance company's claims for unpaid workers' compensation insurance premiums.

Prior to the Fourth Circuit's *per curiam* decision in *Howard Delivery*, only the Ninth Circuit had construed section 507(a)(5) to accord priority to a claim for unpaid workers' compensation premiums. *Employers Ins. of Wausau, Inc. v. Plaid Pantries, Inc.*, 10 F.3d 605 (9th Cir. 1993). Since the Ninth Circuit issued its decision in *Plaid Pantries*, the Eighth, Tenth and Sixth Circuits have had the opportunity to consider this precise issue. All three circuit courts expressly reject the Ninth Circuit's reasoning and hold that unpaid prepetition premiums under various state workers' compensation schemes are not "contributions to an employee benefit plan." *Employers Ins. of Wausau v. Ramette (In re HLM Corp.)*, 62 F.3d 224, 227 (8th Cir. 1995); *State Ins. Fund v. Southern Star Foods, Inc. (In re Southern Star Foods)*, 144 F.3d 712, 716-717 (10th Cir.), *cert denied*, 525 U.S. 978 (1998); *Travelers Property Casualty Corp. v. Birmingham-Nashville Express, Inc. (In re Birmingham-Nashville Express, Inc.)*, 224 F.3d 511, 516-517 (6th Cir. 2000).

It is settled that the general theme of the Bankruptcy Code is "equality of distribution, [and] if one claimant is to be preferred over others. the purpose should be clear from the statute." *Nathanson v. N.L.R.B.*, 344 U.S. 25, 29 (1952). What *is* clear from section 507(a)(5) of the Bankruptcy Code is that "an unsecured claim for unpaid contributions to a [collectively bargained] employee benefit plan is entitled priority under [that provision]." *Birmingham-Nashville Express*, 224 F.3d at 514-515. Accordingly, to the extent there is any doubt about what other claims are entitled to priority under section 507(a)(5), the participants and beneficiaries of multi-

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for the purpose of defraying the costs of legal services for employees, their families, and dependents."

employer plans have a unique interest in ensuring that the priority not be available to claimants not clearly entitled to it, for to do so would "dilute[] the value of the priority for those creditors Congress intended to prefer." *Cramer v. Mammoth Mart, Inc. (In re Mammoth Mart, Inc.)*, 536 F.2d 950, 953 (7th Cir. 1976).

Multiemployer plans routinely are forced to pursue claims for delinquent pension or health and welfare fund contributions from employers who have sought bankruptcy protection. In pursuing those claims in bankruptcy, trustees of multiemployer plans are aided by the priority treatment afforded by section 507(a)(5). By holding that workers' compensation carriers can be deemed "employee benefit plans" under this provision of the Bankruptcy Code, the court below is reducing the priority recovery that will be available for multiemployer plans under section 507(a)(5). The dollar amount of this adverse impact on multiemployer plans will vary from case to case, but in larger bankruptcies, it doubtless will amount to millions of dollars in reduced recovery to the plans.

Accordingly, the NCCMP, its constituent groups and the multiemployer plan community in general have a strong interest in urging the reversal of the decision below. The NCCMP contends that resolution by this Court of the conflict between a divided Fourth Circuit and the Ninth Circuit, on the one hand, and the Sixth, Tenth and Eighth Circuits, on the other, in a manner that follows the sound reasoning articulated by the latter three appellate courts adheres to Congress' intent of overruling *Embassy Restaurant* "by recognize[ing] the realities of labor contract negotiations, under which wage demands are often reduced if adequate fringe benefits are substituted." H.R.Rep. No. 95-595, at 357 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6313 (emphasis added). To effectuate Congress' intent, the priority should be construed narrowly to ensure that contributions owed to collectively

bargained plans are given the priority Congress sought to accord such claims.[8]

Both Petitioner and Respondent have consented to the filing of this brief, as is evidenced by letters of consent that have been filed with the Court.

SUMMARY OF ARGUMENT

A. When considered in the specific context in which it is used, and the broader context of the Bankruptcy Code as a whole, the unambiguous language "contributions to an employee benefit plan arising from services rendered" in section 507(a)(5) would not include unpaid premiums owing for a debtor's statutory workers' compensation liability insurance policy. Claims for contributions to an employee benefit plan under section 507(a)(5) must be read in conjunction with claims for wages and salaries under section 507(a)(4) of the Bankruptcy Code. These two priorities, unlike the other priorities listed in section 507(a), are subject to a single dollar limit. The priority of a wage claim is superior to a claim for employee benefit plan contributions in that the value of the latter claim is limited to the "unused portion" of the wage priority. In this way, an unsecured claim for contributions to an employee benefit plan arising from services rendered becomes a "wage substitute," but only to the extent an em-

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[8] We are mindful that a number of courts have extended the priority to include "plans that are not the product of collective bargaining and are not administered by a union. . ." *See Saco Local Dev. Corp.*, 711 F.2d at 448. The Court need not reach this issue to resolve the instant case. Nonetheless, the First Circuit in *Saco* embraces a rationale that supports the contention that a claim for employer premiums owed to a statutory workers' compensation liability insurance policy is not a priority claim under section 507(a)(5) because such premiums are not the "new forms of [employee] compensation" Congress vested with preferred treat-ment under that priority. *Id.* at 449. *See also Southern Star Foods*, 144 F.3d at 716-717 explaining that *Saco* "is not inconsistent" with the court's holding.

ployee's wage claim under section 507(a)(4) does not exceed $10,000. An employer's workers' compensation premium payment mandated by state law can-not be construed as a "wage substitute" even under the broadest understanding of that term. Moreover, any interpretation of "employee benefit plan" that would expand the class of unsecured creditor claims beyond those claims clearly understood to be covered under that priority contravenes the Bankruptcy Code's general theme of "equality of distribution." *See Nathanson*, 344 U.S. at 29.

B. Assuming the term "contributions to an employee benefit plan" is ambiguous as to whether it includes a claim by an insurance company for unpaid workers' compensation insurance premiums, the legislative history of section 507(a)(5) indicates that Congress did not intend to give a claim for unpaid workers' compensation premiums priority under that provision of the Bankruptcy Code. In his concurring opinion below, Judge Shedd concluded that specific legislative history serves as "direct indication" that Congress intended to give the term "employee benefit plan" in section 507(a)(5) the same meaning as Congress gave that term when it enacted ERISA. Judge Shedd apparently misread that legislative history. The NCCMP is the appropriate party to question his conclusion since Judge Shedd relies on the testimony of the NCCMP's former Chairman to establish this "direct indication" of legislative intent. To the contrary, the testimony of the Chairman of the NCCMP and that of four other witnesses representing the interests of organized workers indicate that the multiemployer plan community and organized labor sought to ensure claims for contributions owed any fringe benefit fund established in accordance with section 302(c) of the Taft-Hartley Act would be included in the priority and the priority itself would provide significant relief to low-wage employees who typically are exposed to the greatest hardship in the event their employer files for bankruptcy. It would be very strange indeed for the pre-eminent spokesman for multi-

employer plans to stand before Congress and urge the enactment of legislation that would significantly dilute the value of the priority accorded multi-employer plans.

ARGUMENT

A. PREMIUMS OWING FOR A DEBTOR'S STATUTORY WORKERS' COMPENSATION LIABILITY INSURANCE POLICY ARE NOT "CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN ARISING FROM SERVICES RENDERED" WITHIN THE SPECIFIC CONTEXT OF §507(a)(5) OR IN THE BROADER CONTEXT OF THE BANKRUPTCY CODE AS A WHOLE.

Of the three opinions below, only Judge King's relies exclusively on the "plain and unambiguous" meaning of the terms "contributions," "employee benefit plan," and "services rendered." *Howard Delivery Serv. Inc.* 403 F.3d at 234-235 (King, J. concurring). However, we respectfully contend that Judge King's reliance on selective dictionary definitions of "contributions," "benefits," and "plan"[9] without considering the specific context in which those terms are used or the broader context of the Bankruptcy Code as a whole was contrary to established rules of statutory interpretation. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). Judge King's unorthodox effort to ascertain the meaning of statutory language by selecting "cherry-picked" dictionary definitions of statutory terms while giving little consideration to the statutory context of those terms ultimately led to an incorrect interpretation of section 507(a)(5). *Compare Robinson*, 519 U.S. at 341 ("At first blush, the term "employees" in § 704(a) [of Title VII of the Civil Rights Act of 1964] would seem to refer to those having an existing relationship with the

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[9] *Id.* at 235-236.

employer in question. . . This initial impression, however, does not withstand scrutiny in the context of § 704(a). . .").

It is conceivable that the term "contributions to an employee benefit plan arising from services rendered" in section 507(a)(5) *may* present under other circumstances ambiguities that require resort to legislative history, but that does not make the statute ambiguous on the point at issue in this case. *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004).

1. When considered in the specific context of sections 507(a)(4) and 507(a)(5), the language "contributions to an employee benefit plan arising from services rendered" means employer contributions made to fringe benefit plans which are generally understood to be wage substitutes.

The priority claim listed in section 507(a)(5) is unique in that it is the only priority claim that expressly references a preceding statutory priority. Moreover, it is the only priority claim with a dollar limit linked directly to the dollar limit of that preceding statutory priority. As a result, a section 507(a)(5) priority claim for contributions to employee benefit plans must be read in conjunction with a section 507(a)(4) priority claim for wages and salaries. As is relevant here, sections 507(a)(4) and (5) provide as follows:

> § 507. Priorities
>
> (a) The following expenses and claims have priority in the following order . . .
>
> (4) Fourth, allowed unsecured claims, but only to the extent of $10,000 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

> (A) wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or
>
> (B) sales commissions earned by an individual or by a corporation . . .
>
> (5) Fifth, allowed unsecured claims for contributions to an employee benefit plan—
>
> (A) arising from the services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only
>
> (B) for each such plan, to the extent of—
>
> (i) *the number of employees covered by each such plan multiplied by $10,000, less*
>
> (ii) *the aggregate amount paid to such employees under paragraph (4)* of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

11 U.S.C. § 507(a)(4) and (5) (emphasis added).

The value of a wage priority claim under section 507(a)(4) is limited by two factors: time (180 days) and amount ($10,000). The Bankruptcy Code also limits by time and amount the value of priority claims for contributions to employee benefit plans. However, section 507(a)(5)(B) places an additional limit on claims for unpaid contributions to employee benefit plans. That limit is linked directly to the aggregate amount paid by the estate to employees under section 507(a)(4).

Collectively bargained employee benefits underscore the relationship between these two section 507(a) priorities.[10] In

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[10] Congress enacted section 507(a)(5) in the context of the collective bargaining process and the employer's concomitant contractual obligation

the context of collective bargaining, the term "wage and benefit package" is frequently used to describe the combined value of an employee's wages and fringe benefits. For example, a hypothetical union may negotiate a contract which provides a $3.75 increase over the prior contract's wage and benefit package. The contractual hourly wage rate may increase by $1.25 with the additional $2.50 allocated among a health and welfare fund, defined benefit pension fund, 401(k) plan and vacation fund.

In these terms, Congress' intent to link the wage and salary priority in section 507(a)(4) with the employee benefit plan contribution priority in section 507(a)(5) is easily inferred. By enacting section 507(a)(5), Congress acknowledged this "bundling" of wages and fringe benefit contributions, but limited the priority for fringe benefit contribution claims to the unused amount of the wage priority. Read together, sections 507(a)(4) and (a)(5) give the employee of a bankrupt employer a priority claim for wages not to exceed $10,000, and if the employee's wage claim is less than $10,000, any claim for contributions to an employee benefit plan may be added to the employee's wage claim to the extent that the sum of the two claims does not exceed $10,000. *See State Ins. Fund v. Mather (In re Southern Star Foods, Inc.)*, 210 B.R. 838, 842 (B.A.P. 10th Cir. 1997), *aff'd* 144 F.3d 712, *cert. denied*, 525 U.S. 978 (1998) (explaining that for purposes of statutory interpretation the relationship between the statutory caps in § 507(a)(5)(B) and §507(a)(4) indicates that Congress did not intend a claim for workers' compensation insurance premiums to be treated as a § 507(a)(5) priority).

A reasonable, albeit broader, reading of "contributions to an employee benefit plan" as used in section 507(a)(5) may embrace premium payments an employer makes to an insurance company in order to provide health care coverage to its

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to contribute to employee benefit funds sponsored by unions. *See infra.*, at 18-22.

workforce even though this employee benefit is not the subject of "bargaining." In *Saco*, the First Circuit considered the issue of whether an insurance company was entitled to priority payment of the bankrupt employer's employee group life, health, and disability insurance premiums notwithstanding the fact that this employer-provided fringe benefit was not the product of collective bargaining. In affirming the bankruptcy court's finding that the claim for premiums was a priority under section 507(a)(5), the court explained:

> Congress' object in enacting [§ 507(a)(5)] was to extend the . . . wage priority to new forms of compensation, such as insurance and other fringe benefits. Insurance is no less a fringe benefit because it is granted by an employer "unilaterally" rather than being provided under the terms of a collective bargaining agreement. . . . We see no merit in the trustee's related argument that the employees must have "substituted" the fringe benefits for wages. Such substitution can normally be assumed, unless the employer is a philanthropist. Regardless, here the bankruptcy court found that Saco used the insurance plan to attract employees, and . . . Saco was able to offer lower wages by "substituting" the noncontributory plan.

Saco, 711 F.2d. at 449. Thus, the court in *Saco* construed a priority claim for "insurance and other fringe benefits" provided by an employer as an *extension* of the section 507(a)(4) wage priority, not something independent or unrelated to wages.[11]

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[11] *Accord, Birmingham-Nashville Express*, 224 F.3d at 518 (While finding the term "employee benefit plan" in section 507(a)(5) is limited to wage substitutes, the court agreed with the First Circuit's holding in *Saco* that to qualify for that priority the wage substitute need not be the product of collective bargaining and may be payable to an insurance company); *but see Southern Star Foods*, 144 F.3d at 718 n.6 (refusing to reach the question of whether Congress intended third parties, such as insurance companies, to assert priority claims under § 507(a)(5)).

Even a broad reading of section 507(a)(5) must take into account the real link between wages, on the one hand, and fringe benefits that may be substituted for wages, on the other. In *Saco*, the First Circuit characterized this link as either a bargain or "a *de facto* 'bargain' in which employees accept[ ] lower wages that other firms pa[y] in return for a noncontributory [health] plan." *Saco*, 711 F.2d at 448. Nonetheless, a policy of insurance "issued to discharge the statutorily mandated *liability* of an employer for workplace injuries" stands in stark contrast to these bargains and *de facto* bargains between employers and their employees. *Howard Delivery Serv, Inc.*, 403 F.3d at 244 (Niemeyer, J. dissenting). *See, also, Birmingham-Nashville Express*, 224 F.3d at 517 ("Workers' compensation is not a wage substitute; rather, it is an award arising out of work-related injury owed by an employer. Consequently, . . . an [insurance company's] assertion of priority again must fail because workers' compensation insurance is not an 'employee benefit plan.'").[12]

Insurance companies providing workers' compensation coverage to employers may identify a number of policy arguments that suggest that the "unique nature of workers' compensation premiums entitles them to preferential treatment." *In re Arrow Carrier Corp.*, 154 B.R. 642, 646 (Bankr. D. N.J. 1993). Nevertheless, these reasons for special priority treatment do not overcome the unambiguous statutory language of sections 507(a)(4) and (a)(5), which limit claims

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[12] In addition, a bankrupt employer's employees would not have a claim for the unpaid premiums their employer owes its workers' compensation insurance carrier. Allowing the insurance company in this case "to have priority under [§ 507(a)(5)], a priority intended to benefit employees, is tantamount to subrogating the insurance company to the priority of the employees," which would appear to be impermissible under § 507(d) of the Bankruptcy Code . . . Pursuant to § 507(d), "an entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(5) . . . is not subrogated to the right of the holder of such claim to priority under such subsection." *See Southern Star Foods*, 210 B.R. at 842.

under the latter to fringe benefits that are substitutes for wages under the former.[13]

Moreover, to prioritize insurance companies' claims for workers' compensation premiums owed where they are not clearly entitled to such treatment "dilutes" the value of the priority for the claims of creditors Congress intended to elevate. For purposes of section 507(a)(5), Congress sought to elevate the claims of employees who are often the hardest hit by a company's demise. *See, e.g., In the matter of Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 658 F.2d 1149, 1163 (7th Cir. 1981) (citations omitted). In practical terms, Zurich American Insurance contends that the unambiguous language of section 507(a)(5) indicates that Congress intended to place an insurance company's claims for workers' compensation premiums on equal footing with claims asserted on behalf of employees for employer contributions owed to pension plans, 401(k) plans, medical funds and other fringe benefit plans that directly impact the health and welfare and future financial security of such employees and their dependents. *See Shapiro v. Saybrook Mfg. Co., (In re*

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[13] In *Arrow Carrier*, the U.S. Bankruptcy Judge rejected the insurance companies' policy arguments by noting that most creditors can assert similar policy arguments—

> [T]he insurance companies argue that preferential payment of their premiums is necessary to ensure the financial viability of the workers' compensation insurance industry. This argument, however, could easily be made by any creditor. In today's complex business marketplace, every business might necessarily have to rely on the prompt payment of bills to ensure its own financial stability. Yet, the very fact that the bankruptcy code exists is testament to the fact that businesses will sometimes not be in the position to satisfy their debts. Accordingly, the price to be paid in the marketplace for the type of service offered should be a reflection of the realities of doing business in a sometimes unpredictable business environment—where bankruptcy is a definite possibility.

Arrow Carrier, 154 B.R. at 646.

Saybrook Mfg. Co.,), 963 F.2d 1490, 1495-96 (11th Cir. 1992) ("Creditors within a given class are to be treated equally and bankruptcy courts may not create their own rules of superpriority within a single class." (citations omitted)).

Regardless of whether insurance companys can put forward compelling policy arguments on why their claims are worthier than those of other unsecured creditors, workers' compensation insurance payments are not wage substitutes. Accordingly, when considered within the specific context of sections 507(a)(4) and 507(a)(5), premiums for a statutory workers' compensation liability insurance policy should not be accorded priority under section 507(a)(5).

2. When considered in the broader context of the Bankruptcy Code, it would be contrary to that Statute's general theme to interpret the priority under § 507(a)(5) expansively.

There is no indication within the broader context of the Bankruptcy Code to suggest that claims by a creditor insurance company for unpaid workers' compensation insurance premiums should be accorded priority status under section 507(a)(5). To the contrary, "the fundamental principle running through all of the Bankruptcy Code is that creditors should generally be treated equally. . . [, and a]n obvious corollary to this principle is that if the claims of a class of creditors are to receive preferential treatment from the courts, the right to such treatment must have been authorized by Congress in clear and precise terms." *Birmingham-Nashville Express*, 224 F.3d at 515 (citing *Embassy Restaurant*, 359 U.S. at 31). *See also HLM Corp.*, 62 F.3d at 226 ("[T]he Code was promulgated to ensure the fair and uniform treatment of creditors. To that end, preferential treatment is given to unsecured creditors only in exceptional circumstances." (citations and internal quotations omitted)).

B. EVEN IF RESORT TO LEGISLATIVE HISTORY IS NECESSARY IN THIS CASE, "CONTRIBUTIONS TO AN EMPLOYEE BENEFIT PLAN" AS CONTEMPLATED BY CONGRESS DOES NOT ENCOMPASS PREMIUMS FOR WORKERS' COMPENSATION INSURANCE.

1. The legislative history of § 507(a)(5) is devoid of any suggestion that "contributions to an employee benefit plans arising from services rendered" would encompass any claims other than those claims for fringe benefits that serve as wage substitutes.

As discussed above, the Court need not resort to 507(a)(5)'s legislative history to interpret it. When, the Bankruptcy Code's "language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004) (citations omitted). Nevertheless, a review of section 507(a)(5)'s legislative history offers additional assurance in light of the split among the circuits. Moreover, in the instant case, a review of the statute's legislative history will serve the dual purpose of addressing certain arguments raised by *amici curiae* below which may have been persuasive to Judge Shedd as reflected in his concurring opinion.[14] As detailed below, the foundation of these arguments rests on an unreliable reading of the Congressional testimony of the NCCMP in 1976.

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[14] *See* note 6, *supra*, and *Howard Delivery Serv. Inc.*, 403 F.3d at 239-240 (Shedd, J. concurring).

Undoubtedly Congress enacted what is now Bankruptcy Code section 507(a)(5) to overrule *Embassy Restaurant.*[15] Moreover, the legislative history relating to the priority reveals that for many years Congress deliberated over the issue of how negotiated fringe benefits should be treated in the aftermath of *Embassy Restaurant* and *Joint Industry Board.*[16] On this point, legislative history of section 507(a)(5) portrays a Congress that considered a new priority for fringe benefits as one of several amendments to the Bankruptcy Code which together could work to reinvigorate the Code's wage priority. By 1973, it had become apparent to many members of Congress that wage inflation over time, robust growth of fringe benefit plans and the Supreme Court's restrictive interpretation of "wages" under the wage priority provision had rendered the relief under the Code's wage priority "nearly meaningless." S. Rep. No. 95-989, at 69

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[15] While Congress noted Justice Black's observation that it is hard to see how employer contributions to a union welfare fund "could not be 'wages' [since] the "payments are certainly not gifts" (359 U.S. at 37 (Black, J. dissenting)). it also acknowledged the evolution and growth of fringe benefit funds:

> When the wage priority was last amended in 1926, perhaps the intent of Congress was not to extend it. . . , because fringe benefits were little heard of at the time. Now, however, to ignore the reality of collective bargaining that often trades wage dollars for fringe benefits does a severe disservice to those working for a failing enterprise.

H.R.Rep. No. 95-595, at 187 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6148.

[16] In declining to overrule *Embassy Restaurant,* the Court in *Joint Industry Board*, reasoned that the matter should be left to Congress, "which has not infrequently given attention" to the priorities it created under the predecessor of § 507(a). "Although the section was completely re-enacted in 1967, . . . [the wage priority] was left unchanged despite the fact that in every Congress since *Embassy Restaurant* bills have been introduced to overrule or modify the result reached in that case." *Joint Indus Bd.*, 391 U.S. at 228.

(1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 at 5855. In its 1973 report to the House of Representatives, the Commission on the Bankruptcy Laws of the United States explained the reasoning underlying a proposed new priority for fringe benefits:

> With respect to claims for wages, which are given a second priority by the present Act as well as the proposed Act, the Commission recommends . . . that the amount of such allowable priority be substantially increased and that it include an amount relating to fringe benefits which under the present law are denied priority as "wages." The employees of a business are ordinarily the ones who suffer most by its bankruptcy and are the ones who are least able, among the creditors, to protect themselves against that eventuality. Therefore, the Commission recommends that the employees be given a substantial priority of payment in preference to all other creditors except those having claims for administrative expenses. . . This principle has always been recognized in the Bankruptcy Act but the present limitation of the amount of the wage priority to $600 per employee, which was set in 1926, does not adequately take account of the inflation that has ocurred since that time. Also, the decision of the Supreme Court that pension fund contributions and other similar fringe benefits are not entitled to any priority (because not "wages") does not adequately recognize the current nature of the "wage package."
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> . . . . The justification for this departure from the general rule of equality is that most wage claimants are solely dependent on their earnings for support of their families and themselves . . . For the same reason as that justifying a priority for wages paid directly to the employee, the Commission also recommends that the priority be extended to include fringe benefits. Fringe benefits are now considered part of the basic wage package that an employee receives from his employer. . . Union nego-

> tiators agree to smaller direct wages in exchange for greater fringe benefits.

Report of the Commission of the Bankruptcy Laws of the United States July 1973, H.R. Doc. No. 137. (1973); *see also* S. Rep. No. 95-989, at 69 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787 at 5855 (1978) (Section 507(a)(4) "overrules *United States v. Embassy Restaurant*. . . . The bill recognizes the realities of labor contract negotiations, where fringe benefits may be substituted for wage demands. The priority is limited to claims for contributions to employee benefit plans such as pension plans, health and life insurance plans, and others, arising from services rendered. . .").

The legislative history of the recently enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") again evidences Congress' ongoing efforts to revise the Bankruptcy Code to provide greater protection to employee wages and wage substitutes. In 2003, Representatives Cannon and Delahunt introduced an amendment to the bill to "provide heightened protections to employees by increasing the monetary cap on wage and employee benefit claims that are entitled to priority under the Bankruptcy Code from $4,650 to $10,000." 149 Cong. Rec. H1986 (2003) (statement of Rep. Delahunt). Any suggestion that the Congressmen introducing this amendment had any inkling that the amendment (or the existing statutory priority) could also provide relief to workers' compensation insurance carriers is belied by Representative Delahunt's comments:

> [B]y increasing the monetary cap on wage and employee benefit claims . . . the amendment increases the likelihood that lower-wage workers would get back *some of the money they are owed*. . . . I am pleased to join . . . Mr. Cannon in offering this amendment. It would restore a modicum of balance to this unfair, unbalanced bill. The sponsors of the bill say they advocate personal responsibility. Yet the bill does nothing to curb the corporate abuses that have turned the Bankruptcy Code into

> a bonanza for a handful of unscrupulous executives. It does nothing to stop corporate insiders from stripping their companies of their assets, paying themselves exorbitant salaries and bonuses and leaving little or nothing for their workers. It does nothing to compensate workers whose *jobs, pensions, health insurance and life savings* have been wiped out by corporate bankruptcies. The amendment represents a first, modest, effort to restore some balance. To recognize the obligations that an enterprise owes to the working people who have labored to build and sustain it. The amendment will increase the chances that *employees and retirees whose companies collapse into bankruptcy are able to retrieve some portion of what they are owed for back wages and benefits.*

149 Cong. Rec. H2052-2053 (2003) (statement of Rep. Delahunt) (emphasis added).[17]

Since Congress first considered adding a priority for "contributions to employee benefit plans arising from services rendered," it has consistently characterized claims under this priority as wage substitutes an employer owes its employees. By contrast, at no time has Congress indicated any interest in distinguishing between premium claims of workers' compensation insurance carriers and claims of other unsecured creditors.

2. It is inappropriate to use the ERISA definition of "employee benefit plan" as an interpretive aid.

In the proceedings below several insurance companies, as *amici curiae* in support of Zurich, suggested that certain testimony before the Subcommittee on Civil and Constitutional Rights of the House Committee of the Judiciary may have persuaded lawmakers to expand the meaning of "employee

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[17] The Cannon-Delahunt amendment was ultimately incorporated into the BAPCPA.

benefit plan" so as to make the term "unqualified." *Amici curiae* also noted that definitions of "employee welfare plan" in ERISA section 3(1) and "employee benefit plan" in ERISA section 3(2) (29 U.S.C. §§1002(1) and (3)) may be used as guidance for determining the meaning of "employee benefit plan" for purposes of section 507(a)(5). *See* Brief of *Amici* Am. Assurance et al. at 22-23 n.4. In his concurring opinion, Judge Shedd took this contention one step further, finding "a direct indication from the legislative history that Congress intended to give this particular term the same meaning that it had given to that same term just four years earlier when it enacted ERISA. *Howard Delivery Serv.* 403 F.3d at 240 (Shedd, J. concurring). We respectfully contend that the *amici curiae* and Judge Shedd have misconstrued the testimony given the House Subcommittee in 1976 and that a proper understanding of that testimony shows that the interested parties that testified before Congress twenty-nine years ago would have strongly objected to any proposal that would result in the dilution of priority claims made by collectively bargained fringe benefit plans.

For sound reasons, the notion that ERISA's definition of "employee benefit plan" should be read into section 507(a)(5) of the Bankruptcy Code has been rejected by most courts. *See Birmingham-Nashville Express*, 224 F.3d at 517 (stating that most federal courts have rejected the view that ERISA "is of some use in construing section [507(a)(5)]); *Southern Star Foods*, 144 F.3d at 714 ("We decline to read the ERISA definition of 'employee benefit plan' into the Bankruptcy Code"). "[T]he ERISA definition and associated court guidelines were designed to effectuate the purpose of ERISA, not the Bankruptcy Code." *HLM Corp.*, 62 F.3d at 226 (citations omitted).[18]

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[18] *Cf., United States v. Reorganized CF&I Fabricators of Utah, Inc.*, 518 U.S. 213 (1996) (declining to apply usage of term in Internal Revenue Code to term in Bankruptcy Code, absent some Congressional indication).

Even when dealing with issues solely within the scope of ERISA, the statutory definition of "employee benefit plan" must be considered in the context of ERISA's purpose. *See Fort Halifax Packing Co., v. Coyne*, 482 U.S. 1, 8-9 (1987) ("Attention to purpose is particularly necessary in this case because the terms "employee benefit plan" and "plan" are defined only tautologically in the statute. . ."). As explained in *Fort Halifax Packing*, an important policy underlying ERISA is the establishment of a uniform national treatment of employee benefit plans. *Id.* at 9. Statements by ERISA's sponsors emphasized the Act's sweeping preemptive effect on state law:

> It should be stressed that with *the narrow exceptions specified in the bill*, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for Federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans.

Id. (quoting Senator Williams, 120 Cong. Rec. 29197 at 29933 (emphasis added)). ERISA's legislative history indicates that while the Act's definition of "employee benefit plan" may be read broadly, the narrow exceptions to the Act's coverage should not be ignored. Consequently, Judge Shedd's apparent incorporation of ERISA's definition of "employee benefit plan" into the Bankruptcy Code without consideration of ERISA section 4(b)(3), 29 U.S.C. § 1003(b)(3), which excludes plans maintained solely for the purpose of complying with applicable workmen's compensation laws from coverage under ERISA, appears especially unpersuasive in light of repeated admonishments by the courts cautioning against expansive interpretations of the Bankruptcy Code's enumerated priorities.

To avoid this apparent inconsistency, Judge Shedd and *amici curiae*, contend that the legislative history of section 507(a)(5) gives direct indication that ERISA's definition

should be incorporated into the statute. The specific legislative history at issue concerns the testimony of the former Chairman of the NCCMP given two years prior to the enactment of the priority. The testimony Judge Shedd identifies is the statement of of Robert Georgine, who in addition to being Chairman of the NCCMP in 1976 was also President of the Building and Construction Trades Department of the AFL-CIO. Mr. Georgine, along with four other representatives of organized labor testified before the House Subcommittee on Civil and Constitutional Rights,[19] and each witness brought with him a broad understanding of the ill effects bankruptcy had on participants and beneficiaries of collectively bargained benefit funds. For example, General Counsel for the International Ladies Garment Workers Union stated:

> In apparel and other industries in which small marginal producers occupy a central role, business failures normally occur at an alarming rate. . . . The degree of harm must not be minimized. It runs into millions of dollars. A substantial portion of the wage delinquency represents benefit fund contributions of firms in federal bankruptcy proceedings; and because of the federal law's failure to accord priority treatment to benefit fund contributions, this large sum of money is virtually unrecoverable. . . . These losses to health, welfare, pension, severance and other funds are directly attributable to the failure of the federal bankruptcy law to accord a wage priority to benefit fund contributions.

Hearings on H.R. 31 and H.R. 32, at 2422 (statement of Max Zimney). *See also Id.* at 2435 (Statement of Jeffrey Gibbs, Industrial Union Department AFL-CIO); *Id.* at 2443-2445 (Statement of Stanley Wisniewski, Research Director, Service Employees International Union); *Id.* at 2446-2447 (Statement

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[19] We have found no evidence in the legislative history that any representative of the insurance industry testified before Congress on the subject of the "employee benefit plan" priority.

of A.E. Lawson, Assistant General Counsel, United Steelworkers of America).

Nevertheless, Judge Shedd and *amici* accurately note that Robert Georgine urged the Subcommittee to give "employee benefit plan" in the Bankruptcy Code the same definition prescribed in ERISA. However, neither Judge Shedd nor *amici* suggest that by making such a recommendation the Chairman of the National Coordinating Committee for *Multiemployer Plans* sought to have insurance companies partake in the limited priority Congress would ultimately provide his membership. Indeed, Mr. Georgine's testimony indicates that he was concerned solely with ensuring that all collectively bargained wage substitutes in the form of contributions to trust funds established pursuant to section 302(c) of the LMRA were covered within the priority:

> We would suggest . . . in view of the increased scope of employee benefit plans which exist today, and the corresponding amendments in Section 302(c) of the Labor-Management Relations Act authorizing contributions to such plans, that the phrase "pension, insurance or *similar* employee benefit plans," which appears in [both] of the Bills be changed so as not inadvertently to exclude certain other types of plans. Section 302(c) of the LMRA expressly recognizes the value of employees, and the public at large, of certain programs or funds prominent in the construction and other industries. I am referring, for example, to joint apprenticeship and training programs or other training programs; trust funds established for the purposes of scholarships for employees and their families to study at educational institutions; child care centers for dependents of employees; and legal service programs. We would therefore urge that the Bills merely refer to "employee benefit plans", and give that phrase a broad definition such as appears in § 3 of [ERISA].

Id. at 2452.

Mr. Georgine's reference to ERISA's definition of employee benefit plan should be put in perspective. In 1976 ERISA was in its infancy, and for those like Mr. Georgine, this new comprehensive statute would still be understood within the context of the Welfare and Pension Plan Disclosure Act of 1958[20] ("WPPDA"), the statute ERISA superseded. Like ERISA, the WPPDA included a definition of "employee welfare benefit plan" which was quite similar to ERISA's definition of that term, with one significant exclusion; unlike ERISA's definition, it did not reference LMRA section 302(c) funds. Conversely, the language in ERISA section 4(b)(3), which excludes from the Act's coverage plans "maintained solely for the purpose of complying with workmen's compensation law," is identical to WPPDA section 4(b)(2). Accordingly, it is likely that the intent of the Mr. Georgine's reference to the newly enacted ERISA was to encourage Congress to include in the proposed priority multiemployer fringe benefit plans other than traditional pension and insurance plans.

For any of these representatives of organized labor and collectively bargained plans knowingly to lobby Congress on behalf of workers' compensation insurance providers on this issue is preposterous. Such a position stands in direct conflict with the interests of union members and collectively bargained plans that no doubt would be harmed by any dilution of the proposed priority.[21]

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[20] Public Law 85-836, 85th Cong. (Aug. 28, 1958)

[21] But one need not rely solely on the strong inference that witnesses before Congress generally do not testify against the interests of those they represent. Included in Mr. Georgine's written statement was an exhibit in the form of a table of hourly wage rates and employer insurance, pension, vacation and other fund payments prepared by the Department of Labor. Apparently, this table was overlooked by *amici curiae*. The table lists four components of employer contributions in addition to basic laborer wage rates—"Insurance," "Pension," "Vacation pay" and "Other". Under the definitions set forth in the table's notes, an employer's payment of

3. Other federal statutes designed to effectuate a purpose akin to the purpose articulated by Congress when enacting section 507(a)(5) are effective interpretive aids for determining the intent of Congress.

Although ERISA may not be an appropriate source for defining "employee benefit plan" under section 507(a)(5) of the Bankruptcy Code, that should not foreclose the courts from considering other federal laws designed to effectuate purposes akin to those which underlie the wage and employee benefit priorities of sections 507(a)(4) and (5). Such statutes may provide valuable insight into how Congress sought to protect real wages as employee fringe benefits became a larger and larger component of many workers' overall wage packages. By first establishing a priority for employee wages and subsequently establishing one for fringe benefits, Congress was acting to protect workers who are especially at risk in the event their employer files for bankruptcy. For similar reasons, Congress enacted the Davis-Bacon Act[22] "to protect employees from substandard earnings by fixing a floor under wages on Government projects." *Walsh v. Schlecht*, 429 U.S. 401, 411 (1977) (quoting *United States v. Binghamton Const. Co.*, 347 U.S. 171, 176-177 (1954)). In 1964, Congress amended the Davis-Bacon Act to "bring the United States' wage practices 'into conformity with modern wage practices.'" *Morrison-Knudsen Construction Co. v. Dir., Office of Workers' Compensation Programs, U.S. Dep't of Labor*, 461 U.S. 624, 632-633 (1983) (quoting S. Rep. No.

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workers' compensation premiums would not be included as Insurance, Pension or Vacation pay. Moreover, note 4 of the Table provides that "Other" "[i]ncludes all other *nonlegally* required employer contributions, except for apprenticeship fund payments." Hear-ings on H.R. 31 and 32, 2462, 2463, n.1–4 (exhibit to statement of Robert Georgine (emphasis added)).

[22] 40 U.S.C. § 3141 *et seq*.

963, 88th Cong., 2d Sess., 1 (1964)). Specifically, the Davis-Bacon Act was amended in 1964 to incorporate fringe benefits into prevailing wage determinations. However, employer payments mandated by federal, state or local law were excluded." Accordingly, section 1(2) of the Davis-Bacon Act provides that "prevailing wages" include—

> (A) the basic hourly rate of pay; and
>
> (B) for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the forgoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying the costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, *but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of those benefits. . .*

40 U.S.C. § 3141(2) (emphasis added).[23]

The purpose underlying the exclusion of benefits required by federal, state or local laws in the Davis-Bacon Act is apparent. Congress recognized that these employer payments are not wage substitutes and should not be used by one contractor to offset the contributions another contractor may pay on behalf of its employees to bona fide fringe benefit plans. To permit contractors to offset *their* payment obligations under federal, state and local laws, would offend the purpose of the statute by artificially deflating employees' actual wage packages. Similarly, to permit an insurance company to assert a priority claim under section 507(a)(5) of the Bankruptcy Code, where the intent of such priority was to

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[23] Chapter 15 of The Department of Labor's Field Operations Handbook (June 29, 1990) details how the Department is to compute hourly fringe benefit equivalents. Section 15f11(h) of Chapter 15 expressly provides that an employer "may not take credit for any benefit required by law, such as social security contributions or *workers compensation*."

provide relief to wage claimants who are solely dependent on their earnings for support of their families and themselves, offends Congress' well-documented intent when enacting 507(a)(5).

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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